

**BEFORE THE POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001**

Periodic Reporting

Docket No. RM2012-6

**PITNEY BOWES INC. REPLY TO USPS RESPONSE TO PETITION
FOR INITIATION OF PROCEEDING TO CONSIDER PROPOSED
CHANGES IN ANALYTIC PRINCIPLE
(JULY 17, 2012)**

Pursuant to Pitney Bowes Inc.'s (Pitney Bowes) Motion for Leave and 39 C.F.R. § 3001.21(b), Pitney Bowes files this reply to the United States Postal Service's Response to Petition for Initiation of Proceeding to Consider Proposed Changes in Analytic Principle. On July 12, 2012 Pitney Bowes filed a Petition for the Initiation of a Proceeding to Consider Proposed Changes in Analytic Principle. The petition was filed in response to an invitation of the Commission in the FY2011 Annual Compliance Determination.¹ The Postal Service takes no position on the merits of Pitney Bowes' proposal; rather it raises several objections to initiating a proceeding as requested. The objections are without merit.

First, the Postal Service contends that the proposal is beyond the scope of 39 C.F.R. § 3050.11 because the selection of a new workshare cost avoidance benchmark is not a change in "analytic principle" under 39 C.F.R. § 3050.1. *See* USPS Response at 1-2. The Postal Service construes the term "analytic principle" narrowly to encompass only "models and formulae" used to calculate costs. *See id.* USPS Response at 2. The Postal Service's position is inconsistent with the plain language of the rules and with Commission precedent.

¹ *See* Dkt. ACD2011, Annual Compliance Determination Report (Mar. 28, 2012) at 99.

The Commission's rules allow interested persons to petition the Commission to convene a proceeding to "change an accepted analytical principle" in order to "improve the quality, accuracy, or completeness of the data or analysis of data contained in the Postal Service's annual periodic reports to the Commission[.]" 39 C.F.R. § 3050.11(a). Under the Commission's rules, the term "analytical principle" is defined as "a particular economic, mathematical, or statistical theory, precept, or assumption applied by the Postal Service in producing a periodic report to the Commission." 39 C.F.R. § 3050.1(c). There is no question that the benchmarks within the First-Class Mail Automation Letters presort tree are used in developing the Postal Service's annual periodic reports to the Commission.² Thus, the only question is whether the selection of appropriate benchmarks within First-Class Mail Automation Letters is based on a theory, precept, or assumption.

² See, for example, the Postal Service's discussion of workshare discounts in the FY2011 Annual Compliance Report (ACR):

"G. Workshare Discounts

With respect to each market dominant product for which a workshare discount was in effect during the reporting year, section 3652(b) of the PAEA requires that the Postal Service provide:

- (1) The per-item cost avoided by the Postal Service by virtue of such discount.
- (2) The percentage of such per-item cost avoided that the per-item workshare discount represents.
- (3) The per-item contribution made to institutional costs.

The data for workshare discounts can be found in USPS-FY11-3.20 In that item, the workshare discounts are shown as the difference between the current prices of the workshared piece and a **benchmark piece**."

USPS FY11 ACR at 48 (emphasis added).

The discussion of the methodology in the preface of Library Reference USPS-FY11-3, also states in pertinent part:

"Costs avoided due to worksharing are developed in the input attachments identified in the Input/Output section below. The cost methodologies used are described in the individual input attachments. Discounts are developed by taking the differences between the current prices of the workshared pieces and **benchmark** pieces as shown on USPS Notice 123—Price List, effective June 6, 2011. Passthroughs are calculated for each discount as the ratio of the discount to the avoided cost."

USPS FY11 ACR, USPS-FY11-3, Preface at 1 (emphasis added).

For the reasons discussed in the initial petition, the selection of appropriate benchmarks within First-Class Mail Automation Letters is based on a theory, precept, or assumption, namely that cost avoided by workshared mail ought to be calculated by comparing its costs to the costs of a benchmark, which is that portion of the less workshared category that is most likely to convert to the next workshare category in response to price differentials (incentives) or preparation requirements. Because there is no longer a price advantage nor any mail preparation requirements for a mailer to perform the additional work to presort First-Class Mail Automation Letters into 3-Digit trays, 3-Digit Automation Letters is no longer a correct reference point or benchmark for the purpose of estimating cost avoidance and passthrough calculations within the First-Class Mail Automation Letters presort tree. For these reasons, the selection of a workshare cost avoidance benchmark falls squarely within the definition of the term “analytic principles.”

The Postal Service’s reading is inconsistent with Commission precedent. In adopting the rule the Commission specifically stated that with respect to workshare cost avoidance analyses in support of the ACR “[c]hanging the classification of cost pools, or the rate categories used as **benchmarks** or proxies, would constitute a change in accepted analytic principles.”³ And since the rule’s adoption, the Commission has repeatedly construed the selection of an appropriate benchmark as a change in analytic principle.⁴

Second, the Postal Service argues that because the issues raised in the petition may implicate pricing issues, these matters are more suitable for consideration in the context of a rate adjustment proceeding or in the Annual Compliance Determination. USPS Response at 2-3.

This objection ignores the fact that Pitney Bowes and other interested parties raised these very

³ See Dkt. No. RM2008-4, Notice of Proposed Rulemaking Prescribing Form and Content of Periodic Reports (Aug. 22, 2008)(Order No. 104) at 29 (emphasis added).

⁴ See Dkt. No. RM2009-3, Order Adopting Analytical Principles Regarding Workshare Discount Methodologies (Sept. 14, 2010)(Order No. 536); Dkt. No. RM2010-13, Order Resolving Technical Issues Concerning the Calculation of Workshare Discounts (Apr. 20, 2012)(Order No. 1320).

issues in Docket No. ACR2011 and, as noted above, were specifically invited by the Commission to file a petition to initiate a proceeding.⁵ The Commission has previously observed that the expedited procedural schedule for reviewing price adjustments under the Postal Accountability and Enhancement Act (PAEA) do not allow for full exploration of complex technical issues.⁶

Finally, the Postal Service's objections that the petition may impair its pricing flexibility are unavailing. USPS Response at 2-3. Accurate reporting of cost avoidance and passthrough calculations is essential to ensure compliance with the limitation on workshare discounts under section 3622(e)(2) of the PAEA. 39 U.S.C. § 3622(e)(2). The Postal Service observes that future pricing changes may require future changes in analytic principles. USPS Response at 2, n.2. This is correct. The Commission's rules and its compliance obligations require a dynamic process.⁷ The speculative concerns regarding the potential burden imposed by "year-round" reviews of pricing issues are unfounded. USPS Response at 3. The Commission's rules have been in place for several years and there is no evidence of abuse or undue burden imposed on the Postal Service.

⁵ See Dkt. ACD2011, Annual Compliance Determination Report (Mar. 28, 2012) at 99.

⁶ See Dkt. No. R2009-2, Order Reviewing Postal Service Market Dominant Price Adjustments (Mar. 16, 2009)(Order No. 191) at 4-5 ("The Commission gave clear notice in its first annual compliance determination and in proposed annual reporting rules that the Postal Service should request advance Commission approval prior to changing accepted analytical methods. It pointed out that more thorough analysis and careful evaluations would result by allowing public comment and Commission consideration free from the financial pressures of rate adjustment requests or the deadlines for annual compliance determinations.")(citing *See* Annual Compliance Determination FY 2007, March 27, 2008, at 10 (FY 2007 ACD); Docket No. RM2008-4, Notice of Proposed Rulemaking Prescribing Form and Content of Periodic Reports, August 22, 2008, at 26.).

⁷ See Dkt. ACD2011, Annual Compliance Determination Report (Mar. 28, 2012) at 99 ("As the Postal Service's operations and pricing incentives change, it may be necessary to modify the approach used to evaluate the affected discounts.").

For the reasons discussed above and in its initial petition, Pitney Bowes respectfully requests that the Commission initiate a proceeding to consider a proposal to change an accepted analytic principle.

Respectfully submitted,

/s/

James Pierce Myers
Attorney at Law
1420 King Street, Suite 620
Alexandria, Virginia 22306
Telephone: (571) 257-7622
E-Mail: jpm@piercemyers.com

Michael F. Scanlon
K&L GATES LLP
1601 K Street, NW
Washington, DC 20006
Telephone: (202) 778-9000
E-Mail: michael.scanlon@klgates.com

Counsel to PITNEY BOWES INC.